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Chapter_____ 19 1985

Bill H_____ S 395 Original bill & hist. ✓ C

H. Committee on_____ S. Committee on Taxation

Hearing Date(s)		C	Hearing Date(s)		C
		C		2/23	✓C
		C			C
		C		3/18	✓C
Date Out		C			C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report_____

SENATE BILL NO. 395

2/12 Introduced
2/12 Referred to Taxation
2/13 Fiscal Note Requested
2/21 Fiscal Note Received
2/23 Hearing
3/18 Tabled in Committee

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Senate BILL NO. 395

INTRODUCED BY Lee Hirsch Eck

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FILING AND RECORDING OF SEVERED MINERAL INTERESTS; PROVIDING FOR SURFACE OWNER ACQUISITION OF UNCLAIMED SEVERED MINERAL INTERESTS; AMENDING SECTIONS 70-19-411 AND 70-28-109, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Severed mineral interests -- legislative findings and declaration of purpose. (1) The legislature finds that the creation of severed mineral interests has been a frequent occurrence throughout the history of this state. The legislature further finds that because of the increasing frequency of the creation of severed mineral interests, the ownership of severed mineral interests throughout the state is becoming more obscured and fractionalized with the passage of time. This obscure and fractionalized ownership often makes it difficult to identify and locate the owners of severed mineral interests, thus impairing the development of this state's mineral deposits in a period of increasing demand for the development of new mineral sources. The legislature further finds that the owners of severed mineral interests do not now contribute revenue to the costs of legal recognition of

LC 1798/01

severed mineral interests or toward the general operating costs of government.

(2) The purpose of [sections 1 through 5] is to identify and clarify the ownership of severed mineral interests, to levy a fee on the privilege of maintaining a severed mineral interest separate from the surface interests, and to provide for vesting title to dormant and unclaimed mineral interests in the owner of the surface which overlies the mineral interests.

NEW SECTION. Section 2. Severed mineral interest to be filed and registered annually. (1) Any person claiming to own a severed mineral interest must file the interest, on a form provided by the county for that purpose, with the clerk and recorder of the county in which the land overlying the severed mineral interest claimed is situated. The form must be made available by the county clerk and recorder upon request and must include:

(a) the name and address of the owner of the severed mineral interest;

(b) the number of mineral acres owned in that county;

(c) a legal description of each mineral interest and the fractional ownership claimed in each parcel; and

(d) a description of the instrument, including the book and page of the index where the instrument may be located, by which the mineral interest was severed from the

INTRODUCED BILL
SB 395

surface and the chain of title owners of the interest through which the person filing the form claims ownership.

(2) Except as provided in [section 3], each owner of a severed mineral interest, except the state of Montana, shall pay to the county clerk and recorder an annual registration fee of 25 cents per mineral acre, with a minimum annual fee of $10, in each county in which a mineral interest is claimed. The annual fee must be paid on or before July 30 of each year.

(3) The county clerk and recorder shall keep a record of all fees paid and by whom paid. If the mineral interest has been filed, annual registration fees not paid are considered delinquent. The owner of a severed miner interest may pay delinquent fees at any time.

(4) The filing and annual registration fees collected pursuant to this section must be deposited to the credit of the general fund of the county in which they were collected.

NEW SECTION. Section 3. Limitation on annual registration fees. Any person owning a mineral interest on October 1, 1985, who files that interest in accordance with [section 2] before October 1, 1986, and at the time of filing pays a one-time fee of 50 cents per mineral acre, is forever exempt from payment of the annual registration fee. However, no one person may claim an exemption under this section for any interest in excess of 20,000 mineral acres

in the entire state. If a person owns more than 20,000 mineral acres, he may choose the mineral acres to which the exemption will apply. The mineral acres exempted or to be exempted under this section must be designated by the owner of those acres on a form provided for that purpose by the department of revenue and filed with the clerk and recorder of the county in which the acres are located and with the department of revenue. An exemption claimed for any acreage exceeding that allowed by this section must be disallowed by the department, which shall inform the owner and the appropriate county clerk and recorder of such disallowance.

NEW SECTION. Section 4. County not required to determine ownership of severed mineral interests -- filing by surface owner. A county is not required to conduct a title search to determine the owner of a severed mineral interest for any tract of land within the county. If no person has filed a severed mineral interest as required by [section 2] by October 1, 1990, or 5 years prior to the filing by the surface owner under [section 5], the surface owner may pay the annual registration fee for the past 5 years and file a notice setting forth as much information concerning the chain of title and current ownership as a diligent title search and reasonably thorough search for lost or missing heirs or owners would produce. The search or searches may not be conducted at the expense of the county

and may not be charged to the owner of the severed mineral interests.

NEW SECTION. Section 5. Adverse possession of a severed mineral interest. (1) Adverse possession of a severed mineral interest may be established by ownership, directly or through proper conveyance, of the surface overlying the mineral interest for 5 years continuously after October 1, 1985, if:

(a) the owner of the severed mineral interest has not:

(i) filed the mineral interest pursuant to [section 2]; or

(ii) paid the annual registration fee or registered the interest and acreage pursuant to [section 2 or 3] within the 5-year period; and

(b) the surface owner has:

(i) filed the notice of severed mineral interest provided in [section 4]; and

(ii) paid the annual registration fee for the 5 years next preceding the filing of an action for adverse possession.

(2) Ownership of the surface is actual, feasible, exclusive, hostile, and continuous possession of the severed mineral interest if the severed mineral interest has not been recorded pursuant to [section 2 or 3] or if the annual registration fee has been paid or registration statement

pursuant to [section 2 or 3] has been filed by the surface owner rather than by the owner of the severed mineral interest.

(3) The provisions of Title 70, chapter 19, part 4, apply to a claim of adverse possession of a severed mineral interest.

(4) An action for quieting title to a severed mineral interest may be brought under the provisions of Title 70, chapter 28.

Section 6. Section 70-19-411, MCA, is amended to read:

"70-19-411. Occupancy and payment of taxes necessary to prove adverse possession. (1) ~~In~~ Except as provided in subsection (2), in no case shall adverse ~~possessions~~ possession be ~~considered~~ established under this code unless it shall be shown that the land has been occupied and claimed for a period of 5 years continuously and the party or persons, their predecessors, and grantors have during such period paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

(2) A claimant under [section 5] need not have paid taxes on the minerals to establish adverse possession of a severed mineral interest."

Section 7. Section 70-28-109, MCA, is amended to read:

"70-28-109. Who bound by judgment. (1) Every person made a defendant to such action by name and every unknown

claimant or possible claimant upon whom service has been made by publication, in accordance with Rule 4, M.R.Civ.P., and who has not appeared in such action shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication.

(2) Within 60 days after service of notice to named defendants or within 60 days after the first publication of the summons with regard to persons served by publication or within a reasonable period prior to final judgment as the court may allow, a person owning or claiming a mineral interest to which plaintiff has commenced a quiet title action may appear and make himself a party to the action. In order to defeat the action, the defendant need only appear and present evidence of his ownership of the mineral interest in question and evidence that the fees have been paid or the statement required by [section 2 or 3] has been filed.

(3) If the plaintiff has paid the fees required by [section 2], the defendant must reimburse the plaintiff for the fees paid plus interest at the rate of 10% per year."

NEW SECTION. Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. FNN 432-85

F I S C A L N O T E

Form BD-1

In compliance with a written request received February 18 19 85 , there is hereby submitted a Fiscal Note for S.B. 395 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 395 is an act providing for the filing and recording of severed mineral interests and providing for surface owner acquisition of unclaimed severed mineral interests.

FISCAL IMPACT:

No fiscal impact expected on the state.

LOCAL IMPACT:

No fiscal impact if it is assumed legislation fees will cover additional administration costs of the county clerks

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 21, 1985

SB 395

FN9:Q/1

Mr. Strope also addressed the Supreme Court case, which ended the room tax in Billings and West Yellowstone. He said the court voted 7-0 against the city's authority to levy the tax. The power to tax belongs to the Legislature alone and cannot be surrendered, he said.

He cited the cases of two of his membership who were against the tax. Mr. Herb Lubrick of the Copper King Inn in Butte; and Mr. Al Donahue of the Heritage Inn in Great Falls, who for years was opposed to the concept of a general sales tax but now believes one is necessary.

Mr. Roland Pratt, Executive Director of the Montana Restaurant Association, said they oppose the bill, but if it is passed it should be allowed only if other funding to local governments is curtailed.

Senator Eck closed saying if local government taxes are offensive, then one is also saying local governments don't deserve to survive. We are putting local governments in an untenable position, she said. Even a sales tax would be discriminatory, she said, as across-the-board taxes seldom occur. She said local option taxes are the best because people vote the tax on themselves. If this bill doesn't pass, she said, the Legislature will have to return some of the property tax base to local governments.

Senator Eck was excused for the remainder of the meeting.

CONSIDERATION OF SB 395: Senator Les Hirsch was recognized as chief sponsor of the bill. He said it does two things: first, it records severed mineral interests for a fee of 25 cents per acre in perpetuity. Second, it gives the surface owner a mechanism for reclaiming severed mineral interests that are not otherwise claimed. He said that recordation is important and if both matters could not be dealt with, at least that should be handled.

Vice Chairman Mazurek assumed the chair.

PROPONENTS

Senator Towe was recognized to testify on the bill. He said it has been before the legislature many times. It addresses the question of large amounts of property completely escaping the tax roles, property that is owned by the very largest corporations in the state, like Burlington Northern. He said the second problem is that much of the property not owned by corporations is so fractioned and diluted that the owners have no interest in the mineral rights and the surface owners cannot locate them to rejoin surface and mineral ownership. he discussed the mechanism in the bill for reuniting ownerships.

Mr. George Ochensky of the Environmental Information Center said

the factionalized nature of mining property deeds is a nightmare that should be dealt with.

Mr. Dennis Hemmer of the Department of State Lands submitted Exhibit 3, which includes his written testimony and amendments.

Mr. Terry Murphy of the Montana Farmer's Union said it is their policy position that mineral interests should revert to the surface owner when the other owner cannot be located and that if the mineral interests are separately owned, they should share in the payment of the property taxes. He said if the mineral interest had no value there would not be so much protest to bills like this.

OPPONENTS

Mr. Ward Shanahan, representing the Montana Mining Association, submitted written testimony (Exhibit 4).

Mr. Bucky Harringer said that severed mineral interests have little value, as the 1-16 drilling success rate proves. He said when they do produce, they pay high severance taxes and net proceeds taxes. He said this bill would be unjust enrichment to the surface owner. He said the administrative work required by the bill would detract dollars from exploration and development.

Mr. Bob Virtz, representing his brothers and sisters, presented his testimony in writing (Exhibit 5) and added that the Legislature should never use the word "forever."

At the normal adjournment time of 9 a.m., Senator Keating rose to request continuation of the hearing as many more opponents wanted to speak. Chairman Towe also felt that was important.

Mr. Melvin Muri of Hysham, Montana said as an oil operator who buys and sells mineral rights he feels the bill would discourage investment in Montana. (Exhibit 6).

Mr. Terry Wisner, representing Montana Power Company, addressed present laws allowing development of oil leases with unidentified mineral interests. He submitted written testimony (Exhibit 7).

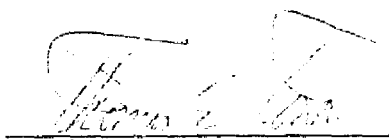
Ms. Karen Wynita of Shepherd, Montana opposed the bill and submitted her testimony in writing (Exhibit 8).

Mr. Darwin Vandergraff of the Montana Petroleum Association rose to oppose the bill.

Senator Tom Keating of Senate District 44 said he had been a petroleum landman for many years. He said the segregated mineral ownership is constitutional and the Legislature cannot neglect legitimate contracts between consenting people. He said the

Supreme Court case referred to by Senator Hirsch was a case of abandonment. He said the railroads had protected themselves and the Federal Land Bank of Spokane and the tribal lands are not addressed by the bill. He said the dual fee system was a conflict. He said many elderly people rely on this income and the fee would be unfair to them. He said it is untrue that mineral interests do not pay taxes.

Chairman Towe said Senator hirsch would have the right to close in Executive Session and adjourned the meeting at 9:10 a.m.



Chairman

DATE January 25, 1985

COMMITTEE ON Taxation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Bucky Heeringer	Self (Billings)	395		✓
TERRY MURPHY	SELF / MONT (BUTTE)	395		✓
W M VAUGHEY JR	SELF (HAVRE)	395		✓
D Vern Dehnert	Mont Petroleum Assn.	395		✓
Robert Durkee	Rebecca - Self	395		✓
Mel Munri	Billings Chamber	395		✓
KAREN HOWE	Billings - Self	395		✓
[illegible]	[illegible]	395		✓
[illegible]	Plum Creek Timber Co.	395		✓
[illegible]	Plum Creek Timber Co.	395		✓
[illegible]	MTA - MEA	434		✓
Geo. Ochenski	ENV. INF. CENTER	395	X	
Dennis Hemmer	Dept of State Lands	395		
[illegible]	Myself	395		X

TESTIMONY ON SENATE BILL 395

BY DENNIS HEMMER, COMMISSIONER OF STATE LANDS

Section 1 of Senate Bill 395 makes a finding that fractionalized severed mineral interests impair the development of the state's minerals because not all of the owners of mineral interest can be identified or located. The purpose of the bill is to identify severed mineral interest owners and return unclaimed interests to the surface owner by adverse possession.

As written, Senate Bill 395 applies to state lands. The Department is of the opinion that the state should be exempted from this bill for several reasons.

First, severed state mineral interests are not and will not become fractionalized. Development of state owned minerals is therefore not impaired.

Second, Section 2-7-121 through 126, MCA, which was enacted in 1979, requires the Board of Land Commissioners to establish and maintain a central file and index of all state owned property except highway right-of-ways. It also requires all agencies to update this information. The public can determine state ownership with a phone call or a letter to the Helena office of the Department or to any of its field offices throughout the state. Another filing system and expenditure of public funds to allow the Department to make the required filings is therefore unnecessary.

Third, Article X, Section 11 of the Montana Constitution provides that no interest in state land can be disposed of unless the full market value of that interest is paid to the state. The adverse possession provision of Senate Bill 395, which authorizes the taking of state land without compensation, is therefore unconstitutional as applied to state lands. The Montana Supreme Court in 1973 held that an adverse possession statute cannot be applied to the state.

For all these reasons, the Department urges the committee to exempt state lands from Senate Bill 395. Attached are amendments that would accomplish the exemption. With these amendments, the Department does not oppose the bill.

Exhibit 3 -- SB 395
February 23, 1985

DEPARTMENT OF STATE LANDS'
PROPOSED AMENDMENTS TO SENATE BILL 395

1. Page 3, line 4.
   Following: "interest"
   Strike: ", except the state of Montana,"

2. Page 4.
   Following: Section 8
   Insert: "NEW SECTION. Section 9. Applicability. This act is not applicable to severed mineral interests owned by the state of Montana."

Statement of Ward Shanahan
for
Montana Mining Association

SB 395 Severed Mineral Interests.

The Association opposes the bill, for the following reasons:

1. The principal problem is attempt to fuse a tax to a bill intended to require identification and notification of " intent to hold" severed mineral interest. These latter purposes are laudable and necessary objectives. However the annual registration fee on a per acre basis destroys the bills legal effect.

2. How can a severed mineral owner be properly "segregated"from the owner of an unsevered interest and held to "support general government" on the basis of an assumed value, when the dwner of an unsevered interest is not? This is discriminatory. The surface (of farms and ranches) is taxed on productivity. This assessment does not include a presumed value for an unsevered interest. There is no fee charged to the owner of unsevered minerals. Therefore property of the same type is being treated differently under this act.

3. Annual registration is not only excessive it is burdensome for most ordinary people. Registration every twenty or even ten years is adequate to achieve the goalof identification of these interests, without making the administrative workload of the county excessive.

4. The elements of a proper bill are:(a) presumption of intent to abandon by failure to file within the statutory period (b) the right in the surface owner to assert the presumption of abandonment in a quiet title action(a right that does not exist now)(c) areasonable fee for recording all"contiguous"mineral acres as a unit. "Contiguity" should be defined as "touching along any part of a side or end line, but not on a corner. If the mineral owner cannot show any activity during the period set forth in the statute(this would include a recorded lease, exploration or drilling) the interest would (after proper service of process in a quiet title action) be presumed abandoned and re-joined to the surface estate.(d)In addition if the surface owner had taken steps to lease, explore ,drill or develop the minerals after the expiration of the statutory period, these facts would give rise to an additional cause of action in "adverse possession" if applications had been filed with appropriate state agencies for the necessary exploration or development permits, or other acts which the court felt were sufficient to bring home to the mineral owner the adverse claim of the owner of the surface estate or anyone holding through or under that person.

Ward A. Shanahan
P.O. Box 1715
Helena, Montana 59624
Tel:442-8560

cc Gary Langley

Exhibit 4 -- SB 395
February 23, 1985

MEMBERS OF THE COMMITTEE

To give a brief history on my interest: In the 1909-10 Era, my father homesteaded on the south ½ of Section 17, 11N, 61E in Wibaux County, Montana. After my parents were married, my mother acquired the NW¼ of this section. At the time of my father's untimely death Nov. 28, 1919, my mother had both surface land and mineral rights to three-fourths of this section.

At the time of my mother's death in 1956, she had "willed" the "surface land"to my half-brother, Orren Lindstrom her youngest child, and the "mineral rights" to be equally divided among her (7)seven natural-born children. This half-brother only survived my mother by (11)eleven months, dying of Lukemia in 1957, resulting in the surface lands going to his widow. She has since re-married so the surface land is no longer in the family.

D. C. Virts of Glasgow, Montana, my brother who has been blind since 1969, and since has had to have both eyes removed, is one owner of one-seventh of these "mineral rights" He isn't able to protect his interest, or afford the yearly assessment on his acreage, proposed in this bill. Many Seniors on pensions are taxed to the limit now. Gulf Oil had a lease on these "mineral rights" which expired Aug. 17, 1984. Oil Leasers have records of the owners, so Section (1) isn't necessary.

I strongly object to the yearly registering and the cost of the same. Your proposal in Section (3), line 23, the word "forever" could be changed any time a future Legislature wanted to for more taxes. I'm defiantely against Section (8). I have other objections which I hope to enlarge on before this committee.

In my opinion, you members of this committee have a moral obligation to kill this entire bill.

Respectively
Robert D. Virts
561 Highland
Helena, Montana

Exhibit 5 -- SB 395
February 23, 1985

February 22, 1985

824 West Park
Butte, MT 59701

Mr. J. D. Lynch
532 West Mercury
Butte, MT 59701

RE: Senate Bill #395

Dear Mr. Lynch:

I am a constituent of yours and currently employed by The Montana Power Company as the Assistant Manager of the Oil and Gas Lease Department.

For eight years prior to my current position, I was an independent petroleum landman living and working in Montana. I am the owner of a few severed mineral interests; I also own some surface acreage under which the minerals were previously severed.

The Montana Power Company is also the owner of some severed mineral interests but this bill does not represent a financial burden to the company as much as an administrative one. Another set of forms, more manpower and higher costs.

Of greater concern to me is my belief that this bill is motivated at least in part by a distorted view of who the typical owner of severed minerals really is. It is not a large corporation or some wealthy out-of-state speculator; it is your local farmer or rancher who sold out for one reason or another, probably upon retirement, and reserved a portion of the minerals under his land. If these minerals happen to be producing, he is likely realizing a decent income from them while also paying a hefty share in taxes. More likely, he is supplementing a fixed income with annual rentals under a nonproducing lease.

Another motivation underlying this bill is undoubtedly a desire for increased revenue. I believe that the increased administrative burden placed on county attornies, clerk and recorders, and treasurers would outweigh any marginal revenues this bill might generate.

Exhibit 6 -- SB 395
February 23, 1985

As an active landman, I am well aware of the sometimes obscure and fractionalized nature of mineral ownership. These situations will not be made any clearer, however, by conflicting registrations of ownership that will result from an already complex chain of title. I am also aware of the occasional difficulty in locating severed mineral owners, but we already have legislation on the books to deal with this problem. Trusts for unlocatable owners may now be established in order to lease their interests. If a legal presumption of death can be made, a public administrator may be appointed to terminate the interest at public sale.

In conclusion, I feel Senate Bill 395 is an ill-conceived, misguided piece of legislation which will not accomplish its objectives. It is a fundamental changing of the rules in the middle of the game and represents a discriminatory burden upon a certain class of property owners.

Sincerely,

Terry Wisner

TW/jh

cc: Sen. Robert Brown
Sen. Pat Goodover
Sen. Thomas Hager
Sen. George McCallum
Sen. Elmer Severson
Sen. Tom Towe
Sen. Joseph Mazurek
Sen. Dorothy Eck
Sen. Mike Halligan
Sen. Les Hirsch
Sen. Ray Lybeck
Sen. Ted Neuman
Rep. Dan Harrington

NAME: Melvin Muri DATE: 2-23-85

ADDRESS: Hysham, Mont

PHONE: 342-5824

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 395

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENT: opposed because this bill is just another method to further harass the oil Community & the State of Montana. as a Oil Operator who Deals in Mineral Rights I am at Present Bringing in Money to the Ranching Industry which is Helping these People Survive during at the time of High interest Rate & Poor Prices for Corn & Ranch Produce If this tax is enacted I'm sure that my Clients who are making these Investments will be discouraged from making further Investments in Montana!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit 7 -- SB 395
February 23, 1985

My name is Karen Wynia. I am the daughter of a rancher from Hysham and my husband is associated with a feedlot. I have worked some in the oil and gas business and have some knowledge about what the effects of this bill would be.

My main concern is that this bill will have a punitive effect on the rancher/farmer who has sold his ranch and retired, keeping part of the mineral rights ~~when he sold the ranch~~ by him self. The sale price of the ranch was based on what the buyer was ~~getting~~ paying in the way of land and of mineral rights. For the State to require a 25¢ annual registration fee to keep those mineral rights active, or to require a 50¢ one-time fee on 20,000 acres will have a drastic effect on many people who tried to keep part of an asset for their declining years hoping to have some lease bonuses along the way, or in some cases, selling off another portion to raise needed capital.

It's true that through the years there have been fractionalized minerals passed on to heirs of farmers and ranchers. Many of those people have left the farming/ranching business because it was ~~not~~ impossible for them to make a living at it. However, they may have been able to hold on to a fraction of the minerals. These people are not sophisticated about legal processes, and for the legislature to enact this bill would be to impose taxes on an asset that may never be able to produce any income.

Another concern I have, after having spent time researching records in courthouses, is the ~~volume~~ Column of paperwork this bill would create, both for the owners of severed mineral interests and for the clerk and recorders. The costs of administration and staff would appear to outweigh the taxes brought in. The additional paperwork creates the possibilities of misquoted legal descriptions.

I also feel that an "ownership privilege" tax on severed mineral owners is discriminatory in that there is no tax on undivided mineral owners proposed in this bill....and that if this legislation is passed, ~~then it would follow that there will be a general tax on mineral "rights"~~ and this is at a time when farmers and ranchers are struggling to survive under the burdens they already have.

It would be deceiving on the farmers/ranchers because it what Jack suggested "Yes" or "No" answers to avoid trapping yourself if they decide to ask questions.

Thank you.

TAXATION COMMITTEE
MONTANA STATE SENATE

March 18, 1985

The fifty-second meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 7:36 am in Room 413-415 of the Capitol Building.

ROLL CALL: Senators Brown, Eck, Goodover, Halligan, Hirsch, McCallum, Neuman and Towe were present at roll call. Senator Mazurek joined the committee at 7:42 am, Senator Severson at 7:45 am. Senators Hager and Lybeck were excused.

CONSIDERATION OF SB 395: Senator Hirsch inquired of other members whether a reduction in the fee would make the bill more acceptable. He said that he viewed it much like water rights problems and felt it was an issue that deserved consideration. Senator Towe said the fee was for the right to sever the mineral from the surface interest. He suggested that the registration could be less often than annual. Senator Halligan said it was the corporations who would attend to filing their mineral interests and the normal folks would have a hard time with the record keeping. Senator Towe responded that the notice provision in the bill would be sufficient. Senator Halligan also suggested that public notice should be given during the five year period during which filings are to be made. Senator Mazurek noted that all other interests revert to the state after abandonment and suggested these should also do that.

MOTION: Senator Goodover moved that SB 395 be tabled.

The committee discussed whether amendments could save the bill. Senator Towe and Senator Hirsch distributed proposed amendments to the bill and discussed the amendments (Exhibit 1).

Senator Goodover suggested that the major changes in the bill would require rehearing the bill.

MOTION: Senator Neuman moved as a substitute motion that SB 395 be amended per Exhibit 1.

The committee discussed the mineral interest as a piece of property. It was noted that the surface owner has the responsibility of the land and pays taxes on the land, but has no authority when the owner of the mineral interest wants to claim the mineral.

Senator Towe noted that the effective date must be changed to October 1, 1985, to make the time periods in the bill function properly.

Senator Halligan said the amendments change the substance of the bill. He said it would be an administrative hassell for counties and that the benefits don't balance with the administrative cost.

Question was called. Senators Brown, Eck, Hirsch, Neuman and Towe voted yes; Senators Goodover, Hager, Mazurek, McCallum and Severson voted no. The motion failed.

The discussion returned to Senator Goodover's motion to table SB 395. Senator Neuman asked if Senator Hirsch's intention had been to get more revenue or to return the severed mineral interest to the land.

Senator Hirsch said that his sole purpose is to avoid fractionalized mineral interests and, secondarily, to get some fee to local governments.

Question was called on the motion. Senators Neuman, Hirsch and Towe voted no. Other members present voted yes, the motion carried.

Senator Eck assumed the chair for purposes of hearing SB 466.

CONSIDERATION OF SB 466: Senator Towe said this bill would assess centrally assessed property at a uniform rate in the same way that SB 390 assessed oil and gas at a uniform rate. Senator Towe used Exhibit 2 to discuss the bill. He said that 36 percent of the taxable value of centrally assessed utilities is in one county and that the out-of-state utilities having an interest there are benefiting from the lowest mill levy in the state. He said that the bill is not intended to change the rate paid by our own utilities, but to fairly tax the out-of-state utility interests. He said it would produce an additional $3 million annually for the state.

PROPONENTS

No additional proponents were heard.

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State Law Library
of Montana

OPPONENTS

Mr. Gene Phillips, representing Pacific Power and Light, said the averaged mill now is 143 and that this bill would increase it to 201, representing a substantial increase . He said now the tax that Pacific Power and Light pays in comes from ratepayers in two counties, while several counties assess PP&L. He noted that Plum Creek Lumber, their single largest rate payer would pay an additional $156,000 in taxes annually. He said that is a substantial impact on a struggling Montana industry. He noted that the bill has no fiscal note and that the Revenue Oversight Committee had voted not to have the bill introduced.

Mr. John Alke, Montana Dakota Utilities, said he opposed the bill. He said MDU taxes would go down slightly, but that bill is a convenient quick fix that would present more long range difficulties. He said the bill would reduce collections in certain counties. He said the local property taxes would be held by the state and local governments would have to hope the state would return the money. He said the bill would work only when the taxable value in Rosebud is high and that as it comes down, it would no longer function.

Mr. Mike Zimmerman, Montana Power Company, said that it appears that 201 is not the averaged assessed levy. He said MPC would figure it on the basis of actual taxes paid at 197.92 mills. He said in its present form the bill represents a tax increase for MPC consumers. He said attacking out-of-state interests is not a rational basis for a tax increase. He said the cost of administration of the bill had